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August 17, 2012

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From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

Executive Summary

This memorandum contains a report on the following:

- **Legislation of County Interest - Analysis of SB 1156 (Steinberg).** This bill would authorize certain public entities to form a Sustainable Communities Investment Authority (Authority) to carry out the Community Redevelopment Law. The bill would require the adoption of a Sustainable Communities Investment Plan and authorize the Authority to include a provision for the receipt of tax increment funds provided that certain requirements are met. The bill also makes findings and declarations regarding interrelated problems that constitute blight and requires the adopted plan to detail how it will address those issues. SB 1156 passed the Assembly Appropriations Committee on August 16, 2012 by a vote of 12 to 5 and now proceeds to the Assembly Floor.

Legislation of County Interest

As previously reported, **SB 1156 (Steinberg)** would have authorized cities and counties to form a joint powers authority, or a city to form a governing board, for the purpose of administering ongoing economic development activities and affordable housing programs under the California Redevelopment Law (CRL) by using tax increment financing. This office and County Counsel identified a number of concerns with the previous version of SB 1156, specifically in regards to: 1) the ability of counties to opt-in

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or opt-out of the governance structure; 2) the exemption from making blight findings or from eradicating blight as part of the Authorities' work plans; 3) the lack of clarity in regards to the Authorities' intent to meet the CRL's housing requirements; and 4) the proposed "carve out" for certain local taxing agencies (schools and special districts) from the tax increment financing plan for the Authorities.

The amendments of August 13, 2012 make significant improvements and address most of the County's concerns. However, we continue working with the author's office on additional amendments to further clarify voluntary use of tax increment and ensure the County is protected. A detailed analysis of SB 1156 is provided below.

Sustainable Communities Investment Program

SB 1156, as amended on August 13, 2012, would support community sustainability and community and economic development initiatives throughout the State by authorizing the creation of a collaborative governance structure (an Authority), providing a consensual process for government entities to invest tax increment revenue to relieve conditions of blight. The Authority will have new planning obligations and will focus on job creation associated with economic development.

An Authority established under SB 1156 shall be deemed as an "agency" as defined in the CRL and will be able to exercise the powers of former Redevelopment Agencies (RDAs), but only as part of the Sustainable Communities Investment Program (Program). For the purposes of the program, a redevelopment project area shall be referred to as a Sustainable Communities Investment Area (SCIA) and a redevelopment plan shall be referred to as a Sustainable Communities Investment Plan (SCIP).

A Sustainable Communities Investment Authority may be created as follows:

- 1) A city, county, city and county, or a special district may create an Authority by entering into a Joint Power Agreement (JPA). The JPA shall establish a governing board and designate the Sustainable Communities Investment Area;
- 2) A city may create an Authority, appoint the governing board, designate a Sustainable Communities Investment Area within the city's incorporated area, and establish the parameters of the proposed economic development within the proposed SCIA. **The county must approve the economic development parameters and the Sustainable Communities Investment Plan (including any amendments to the plan) under this governance structure;**

- 3) A city and county may create an Authority and appoint the governing board, which shall be comprised of two members appointed by the city and two members appointed by the county. A fifth member shall be appointed by the city and county members. The governing board shall designate the SCIA. **Under this governance structure, the Sustainable Investment Communities Investment Plan (including any amendments) shall be approved by both the city and the county;**
- 4) A county may create an Authority and appoint the Authority governing board if the Sustainable Communities Investment Area is within an unincorporated area;
- 5) A city may create an Authority and appoint the governing board, which may designate a Sustainable Communities Investment Area only within the incorporated limits of that city. An Authority formed under this option shall constitute a legally distinct entity from the city which forms it. **This is the only proposed governance structure which would not require a county's approval. However, per the provisions of SB 1156 as amended, the Authority would not be entitled to any tax increment from the county.** A discussion of the tax increment provisions is provided below; or
- 6) If an Authority is created by an entity that is a city and county, the governing body shall be comprised of five members appointed by the mayor of the city, if that appointment is subject to confirmation by the county board of supervisors.

Any city or county approval as it pertains to an Authority shall be by resolution of the legislative body.

Upon adoption of a Sustainable Communities Investment Plan that includes an authorized tax increment financing provision, the county assessor shall allocate tax increment revenue to the Authority as follows:

- 1) If the Authority is a JPA formed by a city, county, city and county, or special district, the Authority shall be allocated the tax increment revenue of each city, county, city and county, and special district that is a party to the JPA;
- 2) If the Authority is formed by a city or by a city and county, the Authority shall be allocated the tax increment revenue of the city and of the county;
- 3) If the Authority is formed by a county, the Authority shall be allocated the tax increment revenue of the county; and

- 4) If the Authority is formed by a city, the Authority shall be allocated the tax increment revenue of the city.

SB 1156, as amended, states that any city, county, city and county or special district may authorize the county assessor allocate its tax increment to the Authority by adoption of a resolution by its governing board. In addition, a taxing agency participating in or approving the formation of an Authority or appointing governing board members may authorize the allocation of all or part of their tax increment to the Authority.

SB 1156 has also been amended to include a provision which states that if a Sustainable Communities Investment Area includes land formerly, or currently, designated as part of a redevelopment project area, any tax increment revenue collected and received by the Authority is subject to and subordinate to any pre-existing enforceable obligations (as defined by Section 34171 of the Health and Safety Code).

In addition to tax increment financing, SB 1156 provides for several other potential funding sources to finance projects undertaken by the Authority. Specifically, SB 1156 permits a State or local pension fund system to invest capital in the public infrastructure projects and private commercial residential developments. It also grants the Authority the ability to exercise the powers of the Marks-Roos Local Bond Polling Act, implement a local transaction and use tax, and issue bonds paid for with Authority proceeds. Additionally, a new provision has been added to allow the legislative body of the city or county forming an Authority to dedicate any portion of its net available revenue to the Authority. Net available revenue would be the property tax revenues available from the Redevelopment Property Tax Trust Fund after all other distributions have been made, including but not limited to payment of enforceable obligations, distributions to all other taxing entities, and administrative fees.

A governing board will be established for each Authority, and shall consist of five members total. Each member will be appointed for a four-year term, except for the initial appointees, who will serve either two- or four-year terms, determined by lot. The Authority will be deemed a local public agency, subject to the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974.

Proposed Exemption of Certain Local Agencies from Tax Increment Financing

The previous version of SB 1156 provided a "carve out" for school districts and special districts, excluding them from the terms district and affected taxing entity for the purposes of tax increment financing under Section 16 of Article XVI of the California Constitution. This provision has been deleted.

Sustainable Communities Investment Areas

As amended, SB 1156 continues to authorize a Sustainable Communities Investment Area to include:

- Transit priority project areas, or areas where a transit priority project may be constructed, provided that the SCIA is based on proximity to a planned major transit stop or high-quality transit corridor scheduled to be completed within the planning horizon established by the Code of Federal Regulations. The transit priority project areas shall be within the geographical boundaries of a Metropolitan Planning Organization (MPO), where a sustainable communities strategy has been adopted and approved by the State Air Resources Board;
- Small walkable communities, as defined in the Public Resources Code, except that a small walkable community may also be designated in a city that is within the area of an MPO. No more than one small walkable community may be designed with a city. All or part of a small walkable community may be included in the SCIA;
- Sites that are restricted to clean energy manufacturing and that are consistent with the use, designation, density, building intensity, and applicable policies for the SCIA, if those sites are within the geographic boundaries of an MPO.

Sustainable Communities Investment Plan

The redevelopment plan for the SCIA may include a provision for the receipt of tax increment funds provided that the local government with land use jurisdiction has adopted all of the following:

- A sustainable parking standards ordinance that restricts parking in transit priority project areas to encourage transit use to the greatest extent possible;
- An ordinance creating a jobs plan that requires all entities receiving financial support from the Authority to enter into an agreement with the Authority describing how the project will: 1) further construction careers that pay prevailing wages and create living wage jobs; and 2) implement a program for community outreach, local hire, and job training that includes disadvantaged California residents (including veterans, people with a history in the criminal justice system, and single parent families);

- For transit priority areas and small walkable communities within an MPO, a plan consistent with the use designation, density, building intensity, and applicable policies specified for the SCIA; and
- For small walkable communities outside of an MPO, a plan for new residential construction that provides a density of at least 20 dwelling units per net acre and, for non residential uses, provides a minimum floor area ratio of 0.75.

Blight Definition for Purposes of the Sustainable Communities Investment Program

The amendments of August 13, 2012 make findings and declarations as they relate to blight. Specifically, SB 1156 declares that the following interrelated problems are a form of blight:

- Inefficient land use patterns which:
 - cause an increased economic burden on taxpayers for the costs of an inefficient transportation infrastructure; and
 - create high combined economic cost of housing and transportation.
- Development patterns which contribute to:
 - declining property values and foreclosures;
 - economic risks for the agricultural industry through the loss of critical farmland; and
 - increased air pollution, energy consumption, and greenhouse gas emissions which impose additional costs on businesses and damage public health; and
 - inefficient consumption of water.

Authorities formed under the Sustainable Communities Investment Program may rely on this new legislative determination of blight and shall not be required to make a separate finding of blight or conduct a survey of blight within the project area. The Sustainable Communities Investment Plan adopted by an Authority must include a statement of how the Plan will relieve blight, and must specifically indicate how it will address the interrelated urban problems detailed above.

Other Provisions

The recent amendments to SB 1156 also add new provisions in regards to the types of projects that may be supported and review of the financial activities and performance Sustainable Community Investment Authority. As amended, SB 1156 would authorize a

Sustainable Communities Investment Plan to include, to the extent applicable to the plan's Area, any of the following: 1) affordable and farmworker housing; 2) transitional and supportive housing; 3) health and safety related infrastructure investments for disadvantaged and rural communities; and 4) infrastructure investments to support county-wide services (including but not limited to, health clinics, hospitals, medical provider offices, child care facilities, day reporting centers, and grocery stores in food desert areas). The Authority will also be required to contract for an independent financial and performance audit, conducted according to guidelines established by the Controller, every five years. The results of the audit will be provided to the State Controller, the Department of Finance and the Joint Legislative Budget Committee.

County Impact and Proposed Amendments

This office, County Counsel, and the Community Development Commission have reviewed the August 13, 2012 amendments to SB 1156 and believe most of the County's concerns have been addressed. In addition, this office and the Sacramento advocates are working with the author's office on amendments to further clarify the County's ability to either opt-in or opt-out of a Sustainable Communities Investment Authority. The proposed language would read:

"Notwithstanding any other law, the auditor-controller shall not allocate to the authority a taxing agency's portion of tax increment unless the governing body for the taxing agency adopts a resolution authorizing it to do so. A taxing agency that adopts a resolution pursuant to this paragraph shall not revoke the assessor's authority under Section 34191.27 if doing so would impair the authority's ability to honor existing obligations secured by tax increment revenues."

The author's office has agreed to the proposed language, and we expect the bill to be amended on the Assembly Floor the week of August 20, 2012.

As currently written, SB 1156 establishes six distinct ways in which an Authority can be formed, and for each of those options, the bill specifies what tax increment (i.e., from which taxing entities) would be allocated to the Authority. Neither of the options provides a way for a city to create an Authority and receive county tax increment without its consent or, where the city and county establish a JPA in collaboration, create a situation where the county is not an equal partner in the decision-making process. There is one option in which a city could form an Authority without consent from the County; however, if a city exercises that option, SB 1156 clearly states that the city would not be allocated any tax increment from the county.

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SB 1156 also provides clarity regarding questions about the allocation of tax increment if a SCIA is established in an existing redevelopment project area. The bill now specifies that if a SCIA is either part of, or entirely overlapping with a redevelopment project area, the tax increment allocated to the Authority would be subject to and subordinate to any preexisting enforceable obligations of the redevelopment agency's successor agency. County Counsel also reports that because only the tax increment of the taxing entities participating in the Authority are being contributed to the SCIA, the pass-through payments of all other taxing entities would also be protected.

Furthermore, the amendments to SB 1156 attempt to respond to concerns raised about previous language which exempted agencies formed pursuant to the bill's provisions from making blight findings to establish a SCIA, or to eliminate blight as part of the SCIA's work program. The bill now makes legislative findings and declarations about what it refers to as blight as it is understood in the contemporary setting – an array of interrelated planning, economic development and environmental concerns. While the bill also states that the purpose of the Sustainable Communities Investment Program is to relieve conditions of blight, it also states that the Authority will be under no obligation to meet blight requirements as previously understood under the California Redevelopment Law. The bill requires that the Sustainable Communities Investment Plan must include a statement specifying how it will address the bill's new definition of blight; however, County Counsel advises this office that the bill's language has no evidentiary requirements in this regard.

The Community Development Commission (CDC) reports that transit-oriented and sustainable development focus of SB 1156 would allow the County greater flexibility to pursue projects in each supervisorial district, including unincorporated areas that are adjacent to mass transit. CDC also notes SB 1156 allows SCIPs adopted pursuant to the legislation to contain provisions that could incentivize special needs housing, which is consistent with Board adopted policies.

Status of SB 1156

SB 1156 passed the Assembly Committee on Appropriations by a vote of 12 to 5 on August 16, 2012. This measure now proceeds to the Assembly Floor.

We will continue to keep you advised.

WTF:RA
MR:AO:ma

c: All Department Heads
Legislative Strategist